

Dig Safe Notice No. 644

Order entered: 4/8/2011

Background

1. Pursuant to 30 V.S.A. § 7001 et. seq., and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to White's Fence Company ("Respondent").
2. Incident Date: August 17, 2009
3. Incident Location: 20 Reginald Street, Winooski, VT
4. Name and Address of Company that Reported the Incident to the Department: Vermont Gas Systems, Inc., 85 Swift Street, South Burlington, VT 05403
5. Date Incident Reported to Effected Utility: August 17, 2009
6. Date NOPV issued by Department: December 24, 2009 (#1673)
7. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. On 8/17/09, White's Fence Company was digging to install a fence post at this site. White Fence Company did not notify the One Call Center prior to beginning this work. During the course of the digging for this project an unmarked Vermont Gas Systems service line was damaged, causing a loss of service to the home owner for one hour. The gas line was not marked out because no notification of the digging was made to the One Call Center. White's Fence Company notified VGS of the damaged facility. The Department of Public Service issued 0 Notices of Probable Violation (NOPV's) to White's Fence Company, during the 12 months preceding this incident."
8. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7004

9. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of Five Hundred Dollars (\$500.00), and attendance at a Department-approved underground damage prevention seminar.
10. The NOPV, along with instructions concerning how to respond to the NOPV, was sent to White's Fence Company on December 24, 2009.¹ To date, White's Fence Company has not filed a response to the NOPV.

Conclusion and Order

Public Service Board ("Board") Rule 3.807(C) provides:

Within 30 days of receipt of a Notice of Probable Violation, any person who is the subject of an enforcement proceeding pursuant to that Notice shall make a written response to the Department and to the Board, with a copy to the Company that reported the alleged violation.

Accordingly, we conclude that it is appropriate to make a binding disposition of this matter *by default*, pursuant to 3 V.S.A. Section 809(d).

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

(1) Within thirty days of the date of this Order, White's Fence Company shall pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont, and sent to the Public Service Board at 112 State Street, Montpelier, VT 05620-2701; and

(2) White's Fence Company shall attend an Underground Damage Prevention Seminar at such time and place as determined by the Vermont Department of Public Service.

1. Letter of Hans E. Mertens, dated December 24, 2009.

Dated at Montpelier, Vermont, this 8th day of April, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 8, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.